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surviving, to her for life, then to A.'s issue. *Held*, that the last gift is too remote. *Taylor v. Blake*, [1912] 1 I. R. 1.

A gift to a class to be determined at the death of an unascertained wife is too remote, as the wife may not be *in esse* at the time of the gift. If in the present case "issue" were construed to mean "children," the gift would be good, as the class would be determined on A.'s death. But the case adopts the English rule of construction that "issue" *primâ facie* means "descendants." *Leigh v. Norbury*, 13 Ves. Jr. 340. Chancellor Kent and Judge Redfield believed the primary meaning of the word was "children." See 4 KENT, COMM., *278, note; 2 REDFIELD, WILLS, 1 ed., 357, note. A few states have adopted their view. *Thomas v. Levering*, 73 Md. 451, 21 Atl. 367. See *Brisbin v. Huntington*, 128 Ia. 166, 173, 103 N. W. 144, 147. The modern tendency is to allow slight circumstances to change the meaning to "children." *Palmer v. Horn*, 84 N. Y. 516; *Shalters v. Ladd*, 141 Pa. St. 349, 21 Atl. 596. But even states that have been most liberal in this adhere to the English rule as to the *primâ facie* meaning, where there are no modifying circumstances. *Schmidt v. Jewett*, 195 N. Y. 486, 88 N. E. 1110. The principal case is right in holding that the rule against perpetuities cannot affect the construction. See GRAY, RULE AGAINST PERPETUITIES, 2 ed., § 629. Two American cases construe "issue" as "descendants" even though this results in a perpetuity. *Estate of Cavarly*, 119 Cal. 406, 51 Pac. 629; *Bartlett v. Sears*, 81 Conn. 34, 70 Atl. 33.

WILLS — CONSTRUCTION — PARTICULAR WORDS: "IN CASE OF DEATH."

— A. devised realty and personalty to his wife for life, and after her death to his eight children, and in case of the death of one or more of the children, their share or shares to be equally divided between the survivors. All the children survived the testator; one died before the widow; the widow died. *Held*, that the heir and personal representative of the deceased child are entitled to his share. *Re Poultney*, 56 Sol. J. 252 (Eng., Ch. D., Jan. 19, 1912).

Where, after an absolute gift, there is a gift over in the event of the death of the legatee, questions of construction arise. Death, which is certain, is spoken of as contingent. If the gift is an immediate gift to A., and if he dies, then to B., it means death in the testator's lifetime. *Hinckley v. Simmons*, 4 Ves. Jr. 160; *Whitney v. Whitney*, 45 N. H. 311; *Fowler v. Ingersoll*, 127 N. Y. 472, 28 N. E. 471. If the gift is future, as in the principal case, it might mean either dying before the testator or before the period of vesting in possession. By the weight of authority, it is taken to mean the latter. *Hervey v. M'Laughlin*, 1 Price 264; *Beatty's Admr. v. Montgomery's Executrix*, 21 N. J. Eq. 324. *Contra*, *Johnes v. Beers*, 57 Conn. 295, 18 Atl. 100. It is said that the testator is not presumed to have contemplated the event of the legatee's dying before himself. See *Green v. Barrow*, 10 Hare 459, 461. This is, of course, only a rule of construction. *Milner v. Milner*, 34 Beav. 276. See 1 WILLIAMS, EXECUTORS, 10 ed., 1007. Even as such its soundness is questionable, for it is inconsistent with the tendency to avoid a construction which would divest an estate. *In re Cobbold*, [1903] 2 Ch. 299. It is submitted that more satisfactory results will be reached if courts, as in the principal case, construe each particular will unhampered by a rule of construction.

WILLS — CONSTRUCTION — TAKING PER STIRPES OR PER CAPITA. — The testator devised land to A. for life and at her death, provided she died without issue, to be equally divided between "the bodily heirs" of X. and Y. The probate court construed the will as giving a half interest to the bodily heirs of X. and a half interest to the bodily heirs of Y. *Held*, that this is error, since all the children should take in equal parts. *Taylor v. Cribbs*, 56 So. 952 (Ala.).

In the absence of any intention to the contrary on the face of the will, the general rule is that all take *per capita* rather than *per stirpes* under a gift to the